

The Features of Legal Social and Economic Relations Workers Regulation with HIV/AIDS in the Russian Federation

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Abstract. In to article features of the persons infected with HIV legal labor status analyzed. It is established that the Russian labor and social law does not allocate workers today – HIV infection carriers with special legal status, regulating the questions connected with identification or presence of a disease at the expense of the general rules (about the discrimination ban, about protection of personal data, about additional guarantees to the working disabled people, etc.). Three directions revealed legal regulation of work of the persons living with HIV: prevention of discrimination; protection of the right to personal privacy; prevention of distribution and timely detection of HIV infections. Typical types of violations of labor rights of HIV-positive people revealed. Suggestions for improvement of the legislation, including on addition of the list of the works demanding obligatory survey on detection of HIV about redistribution of a burden of proof by hearing of cases about discrimination of HIV-positive persons in the labor relations formulated.

1. Introduction

For January 01.2019 the total number of the infected HIV in Russia makes 1.3 million (1.326.239) people, live living HIV-positive people in the territory of Russia 1.007.369 persons. Most high-level prevalence by HIV infection of the population it is observed in-group 30-39 years, 2.8% of the Russian men at the age of 35-39 years lived with the established diagnosis of HIV infection. Women infected with HIV at younger age, already in age group of 25-29 years about 1% infected with HIV; the share of the infected women in age group is even higher than 30-34 years — 1.6%. It is 87% HIV-positive are economically active that speaks them young age, among them the share of Russians with secondary vocational education is disproportionately big - it is working class [1].

Statistical data unfavorably show rapid growth of incidence of HIV infection in Eastern Europe in general and in the Russian Federation in particular. On the other hand, taking into account achievements of medicine the diagnosis of HIV in the modern world is not a sentence for the carrier of a virus, LZHV (the people living with HIV) any more conduct active social and professional life, travel, make families, etc. Nevertheless, presence at them of a disease, which, first, has significant effect on the state of health, secondly, has infectious character (i.e. it can be transferred from one person to another) predetermines need of special legal regulation of separate types of legal relationship with participation of HIV-positive people.

Not least told belongs to the industry of the labor law. The modern Russian labor law directly does not allocate HIV infection carriers as the subject of labor legal relationship with special legal status,

however in line with universal trends includes the separate norms regulating some aspects of work of such persons.

2. Legal determination of the status of people living with HIV

Among the international acts important for determination of the legal labor status of HIV-positive person's special value, have:

- The declaration of the UN on commitment to fight against HIV/AIDS of 27.06.2001 (fixes need of acceptance, strengthening and observance of the relevant legislation, provisions and other measures for elimination of all forms of discrimination against the persons infected with HIV/AIDS and members of vulnerable groups and for ensuring full implementation of all rights of people by them, including the rights for employment, health protection, confidentiality and personal privacy, etc.) [2];

- The set of practical rules on the question "HIV/AIDS and Sphere of Work" (provide the ban of discrimination of HIV-positive people, access to prevention, treatment, leaving and support, personal privacy and confidentiality of data on the HIV status, the ban to demand passing of the analysis on HIV or issues of information on the HIV status) [3];

- International guidelines on HIV/AIDS and human rights of 1996. (Discrimination ban, personal privacy, access to prevention and treatment, etc.) [4].

In Russia, legal regulation of work of HIV-positive persons carried out by standards of the Labor Code of the Russian Federation, others the federal soldiery laws, bylaws it also focused in three directions [5]:

- 1) Prevention of discrimination;
- 2) Protection of the right to personal privacy;
- 3) Prevention of distribution and timely detection of HIV infections:
 - Routine inspections of separate categories of workers
 - Employment of the worker having the status of the HIV-positive.

Basis of legal regulation of work HIV-positive citizens make the Labor Code of the Russian Federation and The federal law of March 30, 1995 No. 38-FZ "About prevention of distribution in the Russian Federation the disease caused by a human immunodeficiency virus (HIV infection)" (further – the Federal Law About prevention of spread of HIV) [6].

According to Article 17 of the Federal Law "About Prevention of Spread of HIV" dismissal about works, refusal in employment, refusal in inclusion in educational institutions and restriction of other rights and legitimate interests of HIV-positive, people based on existence at them of HIV infection not allowed. Also as well as restriction of housing and other rights and legitimate interests of members of families of HIV-positive people not allowed. Article 3 of the Labor Code of the Russian Federation establishes the ban of employment discrimination on any bases that not connected with professional qualities of the worker except for the restrictions set by the federal law.

Existence of the given norms should assessed positively; however, as it is fairly noted in literature, discrimination finish coat in the labor relations is effective only if the person that underwent discrimination has a real opportunity to appeal against discriminatory actions in competent public authority and to receive legal protection [7]. It should note that the Russian law and order in this part has big shortcomings: in many cases of discrimination in the labor relations material harm is absent therefore compensation to the worker of moral harm can become the only adverse effect for the employer; The burden of proving the difference in treatment compared to other employees with discriminatory motives is on the employee (unlike the European states where the burden of proof is redistributed in favor of the employer); claims for protection against discrimination in general and about violation of the rights of HIV-infected in particular are very difficult for judges as the available judicial practice is not numerous and in places is contradictory. Everything is aggravated also with the fact that dismissal of people because of the HIV status has very big latency [8].

Protection of the right to personal privacy LZHV is provided for the account norms on medical secrecy (item 14, 15 Rules of performing obligatory medical examination on detection of a human immunodeficiency virus (HIV infection)) and also norms on protection of personal data of the worker

(called to minimize the probability of stigmatization of the worker as a result of distribution in collective of information on presence of a disease at it). D.A. Shapovalova believes expedient addition Article 86 of the Labor Code of the Russian Federation the instruction on the fact that any information on the state of health, treatment of the patient is medical secrecy [9].

The idea about introduction of the special norm providing protection of LZHV against disclosure of this information by the employer deserves supports. However it has to realize in a bit different form, for example, by addition of Article 17 of the Federal Law «About prevention of spread of HIV» by standard of the following contents: "Information on presence at the person of HIV infection treats personal data".

Precepts of law of the third group aim at protection of the rights not only LZHV (timely detection of a disease, employment with feasible loading), but also societies since the disease is infectious. The Russian legislation provides such concept as "work, connected with risk of spread of infectious diseases».

The resolution of the Government of the Russian Federation of September 04, 1995 No. 877 approved the List of workers of separate professions, productions, the enterprises, institutions and organizations which undergo obligatory medical examination for detection of HIV infection when carrying out obligatory preliminary at revenues to work and periodic medical examinations [10]. Obligatory medical examination at employment and periodic medical examination include medical examination on detection of HIV infection in the order provided by Rules of performing obligatory medical examination on detection of a human immunodeficiency virus (HIV infection) [11]. In case of detection of HIV infection at workers of separate professions, productions, the enterprises, institutions and the organizations, specified in the list, these workers are subject according to the legislation Russian Federation to transfer to other work excluding conditions of spread of HIV infection. The similar rule provided by Federal Law "About sanitary and epidemiologic wellbeing of the population" (Article 33 of Part 2) [12]: the persons which are carriers of causative agents of infectious diseases if they can be sources of spread of infectious diseases in connection with features of production in which they are engaged, or the work performed by them, at them consent are temporarily transferred to other work which is not connected with risk of spread of infectious diseases. If it is impossible to transfer them based on the orders of the chief State sanitary doctors and their deputies, they shall suspended from work with payment of social insurance benefits.

According to the List, the work of medical personnel and also workers and employees connected with direct contact with HIV-positive persons or the biomaterial received from them belongs to work with risk of spread of HIV infection. The head of the organization define of the List of concrete positions and professions of the specified categories of workers. A.A. Ivanov fairly notes that such approach will hardly provide the due level of unity and full coverage of all types of the works excluding work of HIV-positive people in each concrete organization. It is advisable to adopt a centralized list of such works, positions formed based on existing Qualification Guides and professional standards [13].

Obligatory medical examination on detection of HIV infection provided also for certain categories of the military personnel [14].

In literature, offers on addition of the list express persons that are subject to survey on detection of HIV infection. So, E.D. Superechenko suggests including in the list of educators and public catering [15]. However, making the decision on extension of the list, it must be kept in mind that any it's addition is discriminating for HIV-positive persons, as inclusion of a profession in the List assumes a possibility of refusal in reception of LZHV for the corresponding work or dismissal from a post. Respectively such restriction has to pursue the lawful aim and to be proportional to this purpose. The legality of the purpose in this case is undoubted - it is protection of health of the persons having risk of potential infection from the HIV infection carrier in result of implementation of professional activity by it. It is necessary to recognize that the current version of the List of such protection does not provide since provides need of survey of the medical personnel working with HIV-positive people, but does not demand survey of the medical personnel working with HIV-negative patients that causes

bewilderment (in the latter case there is a risk of spread of an infection). The harmony as it represented and defined by:

- Degree of probability of transfer of HIV infection;
- Influence of HIV infection on a possibility of implementation of professional activity [16].

Considering stated, suggestions for improvement of the List of workers that undergo obligatory medical examination for detection of HIV infection, have to base on results of medical researches.

Persons are separately distinguished from HIV-positive workers, patients with AIDS (3-5 stages of HIV). They acquire the status of the disabled person disabled people also use the privileges established to the Labor Code of the Russian Federation (the reduced working hours, an additional holiday, etc.).

In spite of the fact that the Russian legislation creates necessary base for full inclusion of workers with HIV infection in the labor relations, public organizations constantly fix disturbances of labor rights of LZHV, including: oral refusals in employment; the requirement at the applicant of an extract from medical records of polyclinic for 5 flying or certificates of the HIV status; coercion to dismissal at own will, etc. [17].

The introduction of differentiation of legal regulation of work taking into account existence or absence at the worker of HIV infection (the similar idea is stated, in particular, by E.P. Shneyderova, O. Makarevskaya) and granting LZHV of special guarantees in the sphere of work (in addition to the guarantees connected with disability of patients with AIDS) as similar steps can aggravate the actual discrimination of HIV-positive citizens only seems premature [18, 19].

3. Conclusion

The Russian labor and social law does not allocate workers today – HIV infection carriers special legal status, regulating the questions connected with identification or presence of a disease at the expense of the general rules (about the discrimination ban, about protection of personal data, about additional guarantees to the working disabled people, etc.). Special legal regulation provided; it is rather, in relation to professions, work on which connected with risk of spread of an infection. We believe that the priority directions of improvement of legal regulation of work LZHV have to become:

- Correction of the material and legal procedure connected with protection of the rights of the worker against discrimination (in particular, redistribution of a burden of proof in favor of the employer);
- Expansion and specification of the list of the works connected with risk of spread of HIV infection based on results of medical researches and with the assistance of medical community.

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